IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

WP(C).No. 14980 of 2007(G)

PETITIONER:

JOSE MATHEW, AGED 56 YEARS,
S/O.E.V. MATHAI, EDAIKKATTUKUDIYIL HOUSE,
THANKALAM, THRIKKARIYOOR P.O.,
KOTHAMANGALAM.

BY ADV. SRI.SHAJI P.CHALY

RESPONDENTS:

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1. CHIEF ENGINEER, NATIONAL HGIHWAY,
P.W.D., TRIVANDRUM.

2. EXECUTIVSE ENGINEER, NATIONAL HIGHWAY
MUVATTUPUZHA DIVISION, MUVATTUPUZHA.

3. ASSISTANT EXECUTIVE ENGINEER,
NATIONAL HIGHWAY, KOTHAMANGALAM SUB DIVISION,
KOKTHAMANGALAM.

4. VILLAGE OFFICER, KOTHAMANGALAM.

5. M.A. POULOSE, S/O.M.P.ABRAHAM,
MORAKALAYIL HOUSE, THANGALAM,
KOTHAMANGALAM.

BY GOVERNMENT PLEADER SRI.BENJAMIN PAUL
ADV. SRI.ALEXANDER JOSEPH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/08/2007, ALONG WITH W.P.(C).No.13267/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE LOCATION SKETCH.

EXT.P2: COPY OF DOCUMENT NO.2090/05 OF KOTHAMANGALAM SUB REGISTRY.

EXT.P3: COPY OF DOCUMENT NO.2087/05 OF KOTHAMANGALAM SUB REGISTRY.

EXT.P4: COPY OF DOCUMENT NO.2402/03 OF KOTHAMANGALAM SUB REGISTRY.

EXT.P5: PHOTOGRAPH SHOWING THE FILE AND NATURE OF THE ROAD.

EXT.P6: COPY OF THE ORDER PASSED BY THE THIRD RESPONDENT DATED 27.4.2007.

EXT.P7: COPY OF THE W.P.(C).13267/07 FILED BY THE 5TH RESPONDENT.

EXT.P8: COPY OF THE INTERIM ORDER PASSED BY THIS HONOURABLE COURT IN W.P.(C).13267/07 DATED 13.04.2007.

EXT.P9: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE 2ND AND 3RD RESPONDENT DATED 02.05.07.

RESPONDENTS EXHIBITS:

EXT.R3(a): COPY OF THE LETTER SEND BY THE 3RD RESPONDENT DATED 12.02.2007.

TRUE COPY

P.A.TO JUDGE

S. SIRI JAGAN, J.

W.P.(C)NOs.13267,14980 OF 2007

DATED THIS THE 1st DAY OF AUGUST, 2007

JUDGMENT

The petitioner's complaint in this writ petition is that pursuant to Ext.P8 order of this Court in W.P.(c)No.13267/07,which itself was passed exparte without hearing the petitioner although he was a respondent in the writ petition, the Asst. Executive Engineer, the 3rd respondent herein, has passed Ext.P6 order against the petitioner without hearing the petitioner and has not even supplied a copy of the order. For the present, the petitioner would be satisfied with a direction to the 3rd respondent to consider Ext.P9 objections filed by the petitioner and to pass fresh orders after hearing the petitioner also.

2. The petitioner in W.P.(c)No.13267/07 is the 5th respondent herein. It is pursuant to the same Ext.P6 order has been issued to the petitioner in W.P.(c)No.14980/07. He submits that he has no objection in the course suggested. He also submits that with the same direction, W.P.(c)No.13267/07 which is not posted today also can be disposed of. Accordingly, on consent of parties W.P.(c)No.13267/07 is also called for and both the writ petitions are disposed of by this judgment.

3. By Ext.P8 order in W.P.(c)No.13267/07, I directed the 4th respondent to make an enquiry as to whether the petitioner herein has constructed a road to his hotel blocking the drainage by the side of N.H.49 without obtaining permission from the National Highway authority and if the allegation is found to be true to take appropriate action to remove such obstruction.

4. The Government pleader could not satisfy me that Ext.P6 order has been passed after hearing the petitioner in W.P.(C) No.14980/07. Although Ext.P8 order has been passed directing enquiry that does not necessarily mean that the 3rd respondent herein could pass orders without hearing the petitioner in that writ petition. Especially since Ext.P9 objections has been filed, the 3rd respondent in that writ petition ought to have heard the petitioner in the writ petition also before passing final orders.

Accordingly, these writ petitions are disposed of with the following directions.

Ext.P6 is quashed. The Asst. Executive Engineer, National Highway, Kothamangalam Sub Division, Kothamangalam shall pass fresh orders after considering Ext.P9 objections filed by the petitioner as also the representation filed by the 5th respondent in W.P.(c)No.14980/07 and after affording an opportunity of being heard to both parties which shall include opportunity to adduce evidence also. Thereafter, the said Asst. Executive Engineer shall

pass a speaking order considering the contentions of both parties. Such orders shall be passed within two months from the date of receipt of a copy of this judgment.

S. SIRI JAGAN, JUDGE

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